INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes and regulations involved	2
Statement	2
Argument	6
Conclusion	11
Appendix	12

CITATIONS

Cases:	
Adjustment Bureau of St. Louis Credit Ass'n v. *Commissioner*, 21 B. T. A. 232	9
Crooks v. *Kansas City Hay Dealers' Ass'n*, 37 F. 2d 83	10
Durham Merchant's Ass'n v. *United States*, 34 F. Supp. 71	9
Jockey Club v. *Helvering*, 76 F. 2d 597	8
Koon Kreek Klub v. *Thomas*, 108 F. 2d 616	10
Northwestern Jobbers' Credit Ass'n. v. *Commissioner*, 37 F. 2d 880	9
Northwestern Municipal Ass'n Inc. v. *United States*, 99 F. 2d 460	9
Park-West Riverside Associates, Inc. v. *Commissioner*, 110 F. 2d 1022	9
Retailers Credit Ass'n v. *Commissioner*, 90 F. 2d 47	8, 9
Roche's Beach, Inc. v. *Commissioner*, 96 F. 2d 776	10
Santee Club v. *White*, 87 F. 2d 5	10
Trinidad v. *Sagrada Orden*, 263 U. S. 578	10
Uniform Printing & S. Co. v. *Commissioner*, 33 F. 2d 445	9
United States v. *Proprietors of Social Law Library*, 102 F. 2d 481	9
Wilmington Co. v. *Helvering*, 316 U. S. 164	8
Statutes:	
Revenue Act of 1936, c. 690, 49 Stat. 1648, Sec. 101	7, 12
Revenue Act of 1938, c. 289, 52 Stat. 447, Sec. 101	7, 12
Miscellaneous:	
Treasury Regulations 94:	
Art. 101 (6)–1	12
Art. 101 (7)–1	7, 14
Treasury Regulations 101:	
Art. 101 (6)–1	15
Art. 101 (7)–1	15

548372—43

In the Supreme Court of the United States

OCTOBER TERM, 1943

Nos. 241, 242

UNDERWRITERS' LABORATORIES, INCORPORATED, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 167–192) is reported in 46 B. T. A. 464. The opinion of the Circuit Court of Appeals (R. 207–212) is reported in 135 F. 2d 371.

JURISDICTION

The judgments [1] of the Circuit Court of Appeals

[1] These are two cases involving identical issues for different tax years which were consolidated for hearing and decision by the court below (R. 198).

were entered on May 7, 1943 (R. 212–213). The petition for writs of certiorari was filed on August 6, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the taxpayer is exempt from income and excess-profits taxes (a) under Section 101 (6) of the Revenue Acts of 1936 and 1938 because it is operated exclusively for educational or scientific purposes, or (b) under Section 101 (7) of the Revenue Acts of 1936 and 1938 because it is a business league, not organized for profit.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set forth in the Appendix, *infra*.

STATEMENT

The facts found by the Board of Tax Appeals may be summarized as follows:

The National Board of Fire Underwriters, an association of capital stock fire insurance companies, was organized in 1866. Part of the activity of the National Board included investigations and research to reduce hazards and insurance risks. In 1893 the use of electricity for lighting came into use and fire insurance companies were concerned about the resulting fire hazards. The National Board thereupon financed Underwriters' Laboratories of Illinois to carry on the research activities of the National Board on a substantially

enlarged basis. (R. 170.) The taxpayer was organized under the laws of Delaware as a nonstock, nonprofit corporation, on October 31, 1936, in order to carry on the activities of the Illinois Company, acquiring its assets and assuming its liabilities on November 5, 1936 (R. 168–170).

Its certificate of incorporation sets forth in substance the following purposes among others (R. 168–169): (1) To determine the relation of materials to life, fire, and casualty hazards, by scientific investigation, study, and experiment, and to publish standards, classifications, and specifications for materials affecting such hazards. (2) To contract with manufacturers and others for examination of materials with reference to life, fire, and casualty hazards and to report and circulate the results to insurance organizations, and other interested parties, and the public, by the publication of lists and descriptions of tested materials and by the provision for the attachment of certificates or labels thereto. (3) To purchase, operate, and maintain laboratories and equipment and to finance, subsidize, and endow scientific research, looking to the discovery of materials to protect life and property from fire, crime, or casualty and to publish and circulate the result of such investigation and research.

The taxpayer is managed by 15 trustees, elected by the regular members, all of whom are officers of stock fire insurance companies except two who are the president of the taxpayer and the general

manager of the National Board. There are 17[2] regular members, consisting of the original incorporators, the National Board, and officials of the National Board or any company member thereof elected by the regular members. The National Board has one vote for each of its 198 stock fire insurance company members. Associate members, of which there are 91, are elected by the Board of Trustees, but only regular members may vote (R. 170–172).

The taxpayer's principal activity is the examination, testing, classification, and inspection, for manufacturers who request it, of devices, systems, and materials which they manufacture with reference to life, fire, crime, and casualty hazards, for which the taxpayer makes charges based on the volume and extent of the work. The taxpayer refuses its services to purchasers or prospective purchasers. If an article cannot be recommended, only the manufacturer is told; if, however, the product tested meets taxpayer's standards, a report is made to some 250 subscribers of taxpayer's card service, which include the regular and associate members. The information on the cards is later summarized in the listings published in book or pamphlet form, which are supplied to anyone on request. Those to whom they are distributed include manufacturers of products listed

[2] Apparently the Board's statement that there are 77 (R. 171) is a misprint. See Exhibit 7.

therein, federal, state, and municipal departments, including fire chiefs, inspection bureaus, officials in charge of public property, insurance companies, architects, and others. Similarly, taxpayer publishes and distributes card listings at cost according to classifications of listed products, which are maintained in cabinets at the offices of the principal boards of underwriters and inspection bureaus, at many offices of insurance companies, in certain governmental departments, and at headquarters of taxpayer's representatives. The regular and associate members of taxpayer also receive these cards. (R. 172–173.)

Listings of products after approval is conditioned upon an agreement by the manufacturer for one of three standard forms of the taxpayer's continuing inspection service. Agreement entitles the manufacturer to purchase labels bearing the words "Underwriters' Laboratories, Inspected." The charge varies according to the nature and extent of inspection. (R. 173.)

Taxpayer distributes pamphlets calling attention to its testing facilities and the significance of its labels. It similarly circulates a 43-minute motion-picture film showing the operation of its Chicago laboratory. It distributes, at the expense of manufacturers, reports on approved articles of manufacturers containing taxpayer's findings and the manufacturer's claim as to the merits of the product involved. (R. 174.) Taxpayer

also distributes research bulletins pertaining to standards and methods used in tests. Most, if not all, of the bulletins deal with data pertaining to tests made for manufacturers. (R. 173–174.)

When the taxpayer was organized in 1936, it received assets of its predecessor company of $1,156,019 and assumed liabilities of $201,230. (R. 170.) Almost all of its income during the tax years was derived from fees collected from manufacturers for testing, inspection, and label services. This amounted to $1,739,352 in 1937 and $1,622,789 in 1938, excluding refunds to label customers of $80,834 in 1937 and $25,303 in 1938. These amounts, together with about $15,000 in interest and dividends in each year, resulted in net income in 1937 and 1938 of $183,339 and $105,042, respectively. (R. 174–175.)

The taxpayer has never paid any dividends to its members. (R. 175.)

The Board of Tax Appeals found that the taxpayer was not a charitable, educational, or scientific organization or a business league within Section 101 (6) and (7) of the Revenue Acts of 1936 and 1938 (R. 176), and accordingly denied exemption (R. 177–188). The Circuit Court of Appeals affirmed the Board (R. 212).

ARGUMENT

Although the ultimate issue of exemption under Sections 101 (6) and 101 (7) of the Revenue Acts of 1936 and 1938 (Appendix, *infra*) is a

mixed question of law and fact, the taxpayer's claim to exemption here rests largely on factual issues. In substance, the complaint is that the Board of Tax Appeals failed to find that the taxpayer was organized to engage and did engage in scientific research and educational activities for the benefit of the public. The legal arguments are based on the assumption that it was organized and operated for such purposes.

The test of exemption under Section 101 (6) which both the Board and the Circuit Court of Appeals applied is whether or not the taxpayer was organized and operated exclusively for scientific and educational or other exempt purposes. The Board found (R. 182–183) that the taxpayer conducted tests and experiments for manufacturers at their expense in order to obtain information vital to the conduct of the businesses of the taxpayer's insurance company members rather than for the public interest, as the taxpayer contended, and accordingly held that it was not exempt under Section 101 (6). The Board further found that the taxpayer was conducting a business of a kind ordinarily carried on for profit (R. 186)—that is, a commercial testing laboratory (R. 212)—and hence held that it was not exempt as a business league under Section 101 (7) and Article 101 (7)–1 of Treasury Regulations 94 and 101 (Appendix, *infra*), the validity of which is not challenged by the taxpayer.

The court below accepted the Board's findings. In substance, it determined that the evidence did not compel the conclusion or inference that the taxpayer was engaged in scientific and educational activities for the benefit of the public and that, on the contrary, it supported the conclusions and inferences which the Board had drawn. The court's review of the issues of fact was in accord with the rules governing judicial review of the Board's decision. *Wilmington Co.* v. *Helvering,* 316 U. S. 164. There is not only substantial evidence but, as the court below said (R. 212), "there was an abundance of evidence to support the Board's findings." It may well be doubted whether other conclusions were possible.

On the basis of the findings made, no substantial question of law as to the exemption under either section arises. It would seem obvious that an organization established and operated to obtain information vital to the conduct of the businesses of the members of the organization is not a scientific or educational corporation within the meaning of Section 101 (6). Cf. *Jockey Club* v. *Helvering,* 76 F. 2d 597 (C. C. A. 2d).

The Regulations expressly deny exemption, under Section 101 (7), as a business league to a business ordinarily carried on for profit. The validity of the Regulations has not been challenged here and has been sustained in other cases. *Retailers Credit Ass'n* v. *Commissioner,* 90 F.

2d 47 (C. C. A. 9th); *Uniform Printing & S. Co.* v. *Commissioner,* 33 F. 2d 445 (C. C. A. 7th); and *Park West-Riverside Associates, Inc.* v. *Commissioner,* 110 F. 2d 1022 (C. C. A. 2d), affirming *per curiam* unreported memorandum opinion of the Board of Tax Appeals dated June 2, 1939.

The court below did not hold that exemption should be denied on the ground that net earnings inured to the benefit of any individual; hence its decision cannot be said to be in conflict with other cases dealing with that question.[3] Nor is the Board's decision in conflict with *United States* v. *Proprietors of Social Law Library,* 102 F. 2d 481 (C. C. A. 1st), contrary to taxpayer's contention (Pet. 10–13). That case involved very different facts. The law library held to be exempt as an educational corporation provided services for public officials, members of the bar, and other members of the community and was supported by dues and public funds. The district court found

[3] The Board's conclusion that net earnings inured to insurance companies in the form of services necessary to the conduct of the businesses of the insurance companies, however, is consistent with the decisions of other courts. See *Northwestern Municipal Ass'n, Inc.* v. *United States,* 99 F. 2d 460 (C. C. A. 8th); *Northwestern Jobbers' Credit Ass'n* v. *Commissioner,* 37 F. 2d 880 (C. C. A. 8th); *Retailers Credit Ass'n* v. *Commissioner,* 90 F. 2d 47 (C. C. A. 9th); *Durham Merchant's Ass'n* v. *United States,* 34 F. Supp. 71 (M. D. N. C.); *Adjustment Bureau of St. Louis Credit Ass'n* v. *Commissioner,* 21 B. T. A. 232.

that the library was organized and operated for educational purposes, and the Circuit Court of Appeals held that exemption was not to be denied because net earnings were invested in improvements and the improvements were of special benefit to its members. The case does not support the view that net earnings in the form of services cannot be said to have inured to the benefit of members of such an organization as is involved here.

Neither the Board nor the court below denied exemption because taxpayer purposely made large profits while purporting to operate at cost (R. 180–181,. 210) but considered it as one of many factors in arriving at taxpayer's purpose. Thus the decision is not inconsistent with that of this Court in *Trinidad* v. *Sagrada Orden,* 263 U. S. 578. In that case it was stipulated that taxpayer was organized for religious purposes, and this Court held that income devoted to the exempt purpose but derived from real estate and stock owned by the corporation and from the sale of wine and chocolate within the organization did not destroy the exemption, whereas in the instant case it was found that there was not an exempt purpose. Similarly, *Roche's Beach, Inc.* v. *Commissioner,* 96 F. 2d 776 (C. C. A. 2d); *Koon Kreek Klub* v. *Thomas,* 108 F. 2d 616 (C. C. A. 5th); *Santee Club* v. *White,* 87 F. 2d 5 (C. C. A. 1st); and *Crooks* v. *Kansas City Hay Dealers' Ass'n,* 37 F.

2d 83 (C. C. A. 8th) are not inconsistent with the instant case, because in each an exempt purpose was established on facts in no way comparable to those here involved.

CONCLUSION

The decision below is correct and presents no principle applicable beyond the particular facts involved. There is no conflict. The petition should be denied.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.
SAMUEL O. CLARK, JR.,
Assistant Attorney General.
SEWALL KEY,
HELEN R. CARLOSS,
IRVING I. AXELRAD,
Special Assistants to the Attorney General.

AUGUST 1943.